1993

Donald Houston v. Jill D. Houston : Brief of Appellee

Utah Court of Appeals

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[redacted] COURT OF APPEALS

DONALD HOUSTON,

Plaintiff/Appel[redacted]

JILL D. HOUSTON,

Defendant/Appellee.

COURT OF APPEALS 930086 CA
Argument Classification No. 15

[redacted] FOR THE APPELLEE

An appeal fr[redacted] an order dismissing Plaintiff's complaint for [redacted]ling to state a cause of action.

The Honora[redacted] ANNE M. STIRBA, Third District [redacted] Judge, Presiding

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UTAH COURT OF APPEALS

DONALD HOUSTON, Plaintiff/Appellant, vs. JILL D. HOUSTON, Defendant/Appellee.	)	COURT OF APPEALS 930086 CA Argument Classification No. 15

BRIEF FOR THE APPELLEE

An appeal from an order dismissing Plaintiff's complaint for failing to state a cause of action.

The Honorable ANNE M. STIRBA, Third District Court Judge, Presiding

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TABLE OF CONTENTS

TABLE OF CASES

TABLE OF STATUTES

LAW REVIEW ARTICLES

STANDARD OF REVIEW

The Defendant disagrees with the Plaintiff's statement of the Standard of Review.

The Defendant suggests that the essence of any cause of action involves the violation of a "primary right" on which a "duty" of the Defendant rests. The "primary right" and "duty" constitute the cause of action. Here the "primary right" that the Plaintiff alleges was violated is his right of visitation, or the **Right of Filial Consortium.**

The Right of "Filial Consortium" is not recognized in Utah as a tort. The Plaintiff cites no Utah authority for recognition of that right, or of that duty or cause of action.

Contrary, the Defendant directs attention to In re Marriage of Segel 224 C.R. 591 (1986); Surina v. Lucey 214 C.R. 509 (1985) and Borer v. American Airlines 138 C.R. 302 (1977) as support from a sister state that interference with visitation is not actionable in tort, and that no sister state has recognized the tort of Filial Consortium.

STATEMENT OF ISSUES PRESENTED ON APPEAL

The Plaintiff suggests in his brief that one of the issues on review is this case is the tort of intentional infliction of emotional distress. The trial court specifically found no cause of action had been pled in the complaint for that tort. The Plaintiff has not argued in his brief or otherwise, or even cited as error, that there were facts pled to justify a cause of action for

emotional distress or that the trial court was wrong. That issue is simply not on appeal!

The only issue presented for appeal is, if a cause of action exists in tort for intentional interference with Plaintiff's visitation rights, separate and apart from existing legislation.

However, in making such a request, the Plaintiff is in reality forcing this court to:

1. Judicially recognize a new tort of filial consortium;

2. Establish some kind of standard for awarding damages for a completely intangible injury;

3. Specifically rule that the legislature in Section 30-3-5, 30-3-11.1, and 30-3-16.1 Utah Code does not control, regulate and supervise the care, custody and financial relationships between parents and children; and that the best interests of the children will be served in creating the new tort; and

4. To recognize the peripheral problems associated with recognition of the new tort of filial consortium and how they will be handled in actions not presented in spousal context; i.e., where a third party negligently injures both parents and children. How will the court evaluate intangible injuries in multiple claims action.

STATEMENT OF THE CASE

The Plaintiff's Statement of the case is accurate except for the last paragraph thereof.

There never has been a finding, not even allegations in the

complaint, that the Defendant has "continually frustrated, interfered and denied Plaintiff his visitation." Such is not in any record on appeal herein, and is not a fact pled or at issue in this proceeding.

The Plaintiff has not urged nor cited as an issue of error that the complaint was sufficient to state a cause of action for intentional infliction of emotional distress. Therefore, the only issue on appeal is whether a parent can sue in tort for interfering with visitation, bypassing existing legislation provided in Section 30-3-5, which establishes an exclusive remedy to deal with visitation problems between parents.

The Plaintiff is seeking to have this court establish new law, create a new cause of action in tort, for interference with visitation.

The Plaintiff argues it is not creating "new law", but only applying well recognized law of emotional distress to a different body of law.

The trial court found the complaint did not allege a cause of action for emotional distress and the Plaintiff has not argued otherwise; but in the same breath the Plaintiff seems to indicate a new cause of action arising out of emotional distress by finding that a violation of visitation creates a tort of infliction of emotional distress.

Since the issue of emotional distress was not pleaded nor suggested to be error by the trial court, one wonders how emotional distress now suddenly becomes the sole basis of the only cause of

action on which Plaintiff is relying for this appeal.

COURSE OF PROCEEDINGS

The Plaintiff father suggests that there are facts which suggest that he has been "routinely and consistently denied visitation by the Defendant mother." There are no such findings by any court of those facts. Further, the complaint in this matter does not even allege such facts and nothing in the record on appeal suggests such facts.

Instead, this case involves a mother and father who have been in and out of court numerous times litigating issues of non-payment of child support, modification of the divorce decree and contempt for non-payment of child support. Specifically on January 23, 1992, the Plaintiff was incarcerated in the Salt Lake County Jail for contempt, for non-payment of child support.

It is agreed that the Plaintiff did file a complaint case number 92093961CV in this court with one cause of action that is founded solely on "interference with the right of visitation." The court in its bench ruling stated, "The complaint does not allege a cause of action for intentional infliction of emotional distress".

Lastly, the Plaintiff suggests that the action was commenced "only after traditional remedies proved ineffective." There is no such finding by any court, nor is such alleged in the complaint in this matter. Such a suggestions is inappropriate and is not part of the record on appeal.

DISPOSITION AT TRIAL COURT

It is true that this matter was dismissed after Defendant filed a motion to dismiss. Defendant suggests that this court review the order and bench ruling as to the basis of the trial court's dismissal. However, it is essentially as follows:

1) The complaint does not state a cause of action for intentional infliction of emotional distress, and

2) This court may not legislate or create a new cause of action, when the legislature has already provided exclusive remedies dealing with violation of court order visitation.

SUMMARY OF ARGUMENT

The trial court dismissed the complaint on the basis: first, Plaintiff failed to plead a cause of action for emotional distress; and second, because there was no case law to support a new tort cause of action for interference with visitation rights.

The Plaintiff has not argued as error that he did plead a cause of action for emotional distress, nor did the Plaintiff appeal on those grounds or cite as an issue on appeal that he did properly plead a cause of action for emotional distress. That issue is not before this court.

The only issue that is before this court is whether this court should recognize a new tort of filial consortium that has not been recognized in any jurisdiction in these United States.

The Plaintiff would have this court believe that there is a widespread movement adopting a new tort of intentional infliction

of emotional distress and intentional interference with court ordered child visitation. Neither is the case.

The John Marshall Law Review article from which Plaintiff has taken all of his supporting cases deals mostly with Federal child napping cases and none really address the only issue presented by Plaintiff; i.e., establishing a new tort of filial consortium. Sheltra v. Smith 392 A2d 431 cited by Plaintiff is the only case that is applicable to this action. It is an action founded on emotional distress. However, the Plaintiff here has not pled such a cause of action and the case is inappropriate as a reference.

California has recognized the problems of judicial legislation and of adopting a new cause of action of Filial Consortium as have other states. None has recognized the tort. Judicial recognition of loss of consortium has always been narrowly circumscribed. It is an intangible injury for which money does not and cannot compensate. Not every loss can be made compensable in money. Legal causation must exist and it is the duty of the courts to locate the line of liability and the line which is essentially political, remembering that it is not the duty of the courts to legislate.

Lastly, to recognize the new right and duty proposed by Plaintiff would only undermine the purpose of the Family Law Act which is designed to regulate and supervise the care, custody and financial support of minor children.

Neither the Plaintiff nor the author of the John Marshall Law Review article have addressed these issues and problems, preferring

to avoid them and suggest that the new wave of the future is to simply adopt a new tort law, broad brushing the issues without facts claiming without substantiation that the "traditional remedies are 'ineffective'".

DETAILED ARGUMENT

ARGUMENT I

THE TORT OF FILIAL CONSORTIUM DOES NOT EXIST IN UTAH

The only right the Plaintiff seeks in this action to enforce by way of tort is his right of child visitation, or the right of Filial Consortium.

The Plaintiff has cited no case law to support the existence of that cause of action in Utah or in any other jurisdiction of any sister state.

In California the court in Foy v. Greenblott (1983) 190 C.R. 84 stated:

> The right of filial consortium has not been recognized as a basis for a cause of action in California.

In In Re Marriage of Segel (1986) 224 C.R. 591 the court there, faced with an identical fact situation that exists in the instant action, held:

> The judicial recognition of a cause of action for loss of filial consortium would undermine the purpose of the Family Law Act which is designed, among other things, to regulate and supervise the care, custody and financial support of minor children whose parents are the subjects of dissolution proceedings.

The court in Segel cited additional policy reasons for not finding a valid new cause of action of Filial Consortium including:

1. Loss of consortium should be narrowly circumscribed, and such an action would not be within the bounds;

2. Cost of attempting to compensate for loss of society of parent and child cannot be justified the social cost of the tort;

3. Party must seek redress under Family Law Act;

4. Public policy would be best served by not awarding damages in situations where a claim is between parent and child.

Here the Plaintiff is asking this court, with no authority whatsoever, to recognize the tort of Filial Consortium. No other jurisdiction recognizes that right. The policy of judicial legislation is set forth in 64 Harvard Law Review 1188:

> Judicial opinions abound in declarations to the effect that a reviewing court must follow the law, and that the policy, wisdom or justice of the law is for the legislature and not the courts to determine.

If that right is to be recognized, it should be the responsibility of the legislature and not this court.

ARGUMENT II

NO ACTION FOR EMOTIONAL DISTRESS HAS BEEN PLED OR APPEALED

As previously stated the trial court found that no cause of action for emotional distress had been pled nor was an appeal taken from that ruling. The Plaintiff cannot now seek to argue emotional distress as the basis of any claim as he does in his arguments I and II. They are simply not before the court.

Plaintiff's complaint only states that the Defendant intentionally and effectively interfered with visitation. Even by

the standards of Plaintiff's own authority, note 111 of the John Marshall Law Review article, emotional distress has only been found where one party's conduct has been so outrageous in character and so extreme in degree as to go beyond all possible bound of decency, with citations. Such was not pled.

ARGUMENT III

NO TORT CAUSE OF ACTION OF EMOTIONAL DISTRESS EXISTS IN UTAH FOR INTERFERENCE WITH VISITATION BY A PARENT

All cases cited by Plaintiff that urge adoption of a new cause of action for emotional distress deal with physical abduction from a parent having lawful custody. The sole exception is Sheltra v. Smith, supra, but there the court stated a prima facia case must include:

1. Outrageous conduct;
2. Acts done intentionally or with reckless disregard;
3. Severe emotional distress to Plaintiff;
4. Defendant's conduct must be proximate case of injury.

All other state courts have refused to recognize the tort for the reasons set forth in Argument I of the Defendant. Moreover, the only other authority cited by Plaintiff is scattered lower federal district court rulings. It is well recognized that:

> Where lower federal court precedents are divided or lacking, state courts must necessarily make an independent determination of federal law.
> Rohr v. San Diego (1959) 51 C2d 759; 336 P2d 521

The Defendant believes that Utah has already established family law statutes to deal with disputes raised by the Plaintiff;

and that this court, by recognizing this tort, would be undermining the Family Law Act and essentially be conducting judicial legislation.

CONCLUSION

The Plaintiff suggests that "the trend" of national modern law is to support recognition of the tort of emotional distress from interfering with court ordered visitation. He offers no facts to support that position. Even the John Marshall Law Review article on page 312 indicates that different states are attempting to find alternate ways to deal with parental visitation.

> There is a trend among several jurisdictions to relax custody modification standards as a means to solve the problem of parental interference with visitation.

Further, there is no issue before this court dealing with emotional distress as it was not pled nor cited as error, nor appealed.

Thus, the Plaintiff seeks only that this court recognize a new tort of Filial Consortium, providing no authority or basis under which this court may act.

This appeal must be denied and the Defendant awarded legal fees and costs in defending a frivolous appeal.

Date 7-15-93

RICHARD S. NEMELKA
Attorney for Defendant/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this the 15 day of July, 1993 I duly personally hand delivered Two (2) copies of the foregoing Appellee's Brief to counsel for the Plaintiff at his office address as follows;

GEORGE H. SEARLE
2805 South State St.
Salt Lake City, UT 84115

30-3-13.1. Establishment of family court division of district court.

A family court division of the district court may be established with the consent of the county commission in a county in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts require use of the procedures provided for in this act in order to give full and proper consideration to such cases and to effectuate the purposes of this act. The determination shall be made annually by the judge of the district court in counties having only one judge, and by a majority of the judges of the district court in counties having more than one judge. 1969

30-3-14. Repealed. 1961

30-3-14.1. Designation of judges — Terms.

In a county within a judicial district having more than one judge of the district court but having a population of less than 300,000 and in which the district court has established a family court division, the presiding judge of such court shall annually, in the month of September, designate at least one judge to hear all cases under this act. In a county within a judicial district having more than one judge of the district court and having a population of more than 300,000 and in which the district court has established a family court division, the presiding judge of such court shall annually, in the month of September, designate at least two judges to hear all cases under this act, and shall designate one of such judges as the presiding judge of such family court division. Such judge or judges shall serve on the family court division not less than one year and devote their time primarily to divorce and other domestic relations cases. 1969

30-3-15. Repealed. 1961

30-3-15.1. Appointment of domestic relations counselors, family court commissioner, and assistants and clerks.

In each county having a population of less than 300,000 and in which the district court has established a family court division the district court judge or judges may, and in each county having a population of more than 300,000 and in which the district court has established a family court division the district court judges shall, by an order filed in the office of the clerk on or before July 1 of each year, appoint one or more domestic relations counselors, an attorney of recognized ability and standing at the bar as family court commissioner, and such other persons as assistants and clerks as may be necessary, to serve during the pleasure of the appointing power. 1969

30-3-15.2. Repealed. 1992

30-3-15.3. Commissioners — Powers.

Commissioners shall:

(1) secure compliance with court orders;

(2) require completion of mandatory mediation as provided in Sections 30-3-21 and 30-3-24;

(3) require attendance at the mandatory course as provided in Section 30-3-11.3;

(4) serve as judge pro tempore, master or referee on:

(a) assignment of the court; and

(b) with the written consent of the parties:

(i) orders to show cause where no contempt is alleged;

(ii) default divorces where the parties have had marriage counseling but there has been no reconciliation;

(iii) uncontested actions under the Uniform Act on Paternity;

(iv) actions under the Uniform Civil Liability for Support Act; and

(v) actions under the Reciprocal Enforcement of Support Act; and

(5) represent the interest of children in divorce or annulment actions, and the parties in appropriate cases. 1992

30-3-15.4. Salaries and expenses.

Salaries of persons appointed under the foregoing sections shall be fixed by the board of commissioners of the county in which they serve. Office space, furnishings, equipment and supplies for family court commissioners and conciliation staff shall be provided by the board of county commissioners. The expenses and salaries of family court commissioners and conciliation staff shall be paid from county funds under Section 17-16-7. 1969

30-3-16. Repealed. 1961

30-3-16.1. Jurisdiction of family court division — Powers.

Whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is a child of the spouses or either of them under the age of 17 years whose welfare might be affected, the family court division of the district court shall have jurisdiction over the controversy, over the parties and over all persons having any relation to the controversy and may compel attendance before the court or a domestic relations counselor of the parties or other persons related to the controversy. The court may make orders in divorce or conciliation proceeding as it deems necessary for the protection of the family interests. 1969

30-3-16.2. Petition for conciliation.

Prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse or both spouses may file a petition for conciliation in the family court division invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or an amicable settlement of the controversy between them so as to avoid litigation over the issues involved. 1969

30-3-16.3. Contents of petition.

The petition for conciliation shall state:

(1) A controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(2) The name and age of each child under the age of 17 years whose welfare may be affected by the controversy.

(3) The name and address of the petitioner or the names and addresses of the petitioners.

(4) If the petition is filed by one spouse only, the name and address of the other spouse as a respondent.

(5) The name, as a respondent, of any other person who has any relation to the controversy and, if known to the petitioners, the address of such person.

maintenance, or alimony under this chapter or Title 30, Chapter 4, provides a different time for payment, all monthly payments of support, maintenance, or alimony provided for in the order or decree shall be due one-half by the 5th day of each month, and the remaining one-half by the 20th day of that month. 1985

30-3-10.6. Payment under child support order — Judgment.

(1) Each payment or installment of child or spousal support under any child support order, as defined by Subsection 62A-11-401(3), is, on and after the date it is due:

(a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (2);

(b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction; and

(c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (2).

(2) A child or spousal support payment under a child support order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was given to the obligee, if the obligor is the petitioner, or to the obligor, if the obligee is the petitioner.

(3) For purposes of this section, "jurisdiction" means a state or political subdivision, a territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) The judgment provided for in Subsection (1)(a), to be effective and enforceable as a lien against the real property interest of any third party relying on the public record, shall be docketed in the district court in accordance with Sections 78-22-1 and 62A-11-311. 1989

30-3-11. Repealed. 1961

30-3-11.1. Family Court Act — Purpose.

It is the public policy of the state of Utah to strengthen the family life foundation of our society and reduce the social and economic costs to the state resulting from broken homes and to take reasonable measures to preserve marriages, particularly where minor children are involved. The purposes of this act are to protect the rights of children and to promote the public welfare by preserving and protecting family life and the institution of matrimony by providing the courts with further assistance for family counseling, the reconciliation of spouses and the amicable settlement of domestic and family controversies. 1969

30-3-11.2. Appointment of counsel for child.

If, in any action before any court of this state involving the custody or support of a child, it shall appear in the best interests of the child to have a separate exposition of the issues and personal representation for the child, the court may appoint counsel to represent the child throughout the action, and the attorney's fee for such representation may be taxed as a cost of the action. 1969

30-3-11.3. Mandatory educational course for divorcing parents — Pilot program — Purpose — Curriculum — Exceptions.

(1) There is established a mandatory course for divorcing parents as a pilot program in the third and fourth judicial districts to be administered by the Administrative Office of the Courts from July 1, 1992, to March 1, 1994. The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer this pilot program.

(3) As used in this section, both parties to a divorce action who have a child or children and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program is administered are governed by this section. As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number unless waived under Section 30-3-4. If waived, the court may permit the divorce action to proceed.

(4) The mandatory course shall instruct both parties about divorce and its impacts on:

(a) their child or children;

(b) their family relationship; and

(c) their financial responsibilities for their child or children.

(5) The Administrative Office of the Courts shall administer the course pursuant to Title 63, Chapter 56, Utah Procurement Code, through private or public contracts and organize the pilot program in the third and fourth judicial districts as defined in Section 78-1-2.1.

(6) The certificate of completion shall constitute evidence to the court of course completion by the parties.

(7) (a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of the Courts to the "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce shall be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(8) Appropriations from the General Fund for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay for the costs for the indigent parent who makes a showing as provided in Subsection 30-3-11.3(7)(b).

(9) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory course. Progress reports shall be provided semi-annually on the date of implementation of this section and on the results beginning January 1, 1993. The results shall be reported to the Judiciary Interim Committee on a bi-annual basis. 1992

30-3-12. Courts to exercise family counseling powers.

Each district court of the respective judicial districts, while sitting in matters of divorce, annulment, separate maintenance, child custody, alimony and support in connection therewith, child custody in habeas corpus proceedings, and adoptions, shall exercise the family counseling powers conferred by this act. 1969

30-3-13. Repealed. 1961

(h) irreconcilable differences of the marriage;

(i) incurable insanity; or

(j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

(4) A decree of divorce granted under Subsection (3)(j) does not affect the liability of either party under any provision for separate maintenance previously granted.

(5) (a) A divorce may not be granted on the grounds of insanity unless: (i) the defendant has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and (ii) the court finds by the testimony of competent witnesses that the insanity of the defendant is incurable.

(b) The court shall appoint for the defendant a guardian ad litem, who shall protect the interests of the defendant. A copy of the summons and complaint shall be served on the defendant in person or by publication, as provided by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county where the action is prosecuted.

(c) The county attorney shall investigate the merits of the case and if the defendant resides out of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the defendant and the interests of the state.

(d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children, as the courts and judges possess in other actions for divorce.

(e) The plaintiff or defendant may, if the defendant resides in this state, upon notice, have the defendant brought into the court at trial, or have an examination of the defendant by two or more competent physicians, to determine the mental condition of the defendant. For this purpose either party may have leave from the court to enter any asylum or institution where the defendant may be confined. The costs of court in this action shall be apportioned by the court. 1987

30-3-2. Right of husband to divorce.

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband. 1953

30-3-3. Temporary alimony and suit money.

The court may order either party to pay to the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action. 1953

30-3-4. Pleadings — Findings — Decree — Sealing.

(1) (a) The complaint shall be in writing and signed by the plaintiff or plaintiff's attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause.

(c) If the plaintiff and the defendant have a child or children and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program shall be administered, a decree of divorce may not be granted until both parties have attended a mandatory course provided in Section 30-3-11.3 and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall make and file findings and decree upon the evidence.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree. 1992

30-3-4.1 to 30-3-4.4. Repealed. 1990

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony — Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; and

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide the day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and

maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

(4) In determining visitation rights of parents, grandparents, and other relatives, the court shall consider the welfare of the child.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

(7) When a petition for modification of child custody or visitation provisions of a court order is made and denied, the court may order the petitioner to pay the reasonable attorney's fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted in good faith. 1991

30-3-5.1. Provision for income withholding in child support order.

Whenever a court enters an order for child support, it shall include in the order a provision for withholding income as a means of collecting child support as provided in Title 78, Chapter 45d. 1985

30-3-5.2. Allegations of child abuse or child sexual abuse — Investigation.

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court shall order that an investigation be conducted by the Division of Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4, Part 5. A final award of custody or visitation may not be rendered until a report on that investigation is received by the court. That investigation shall be conducted by the Division of Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section 78-7-9. 1992

30-3-5.5. Petition to protect abused child — Jurisdiction under this chapter.

(1) A person who has filed a complaint under this chapter may also file a petition with the district court for a protective order for the protection of any children residing with either party to the action under this chapter. The petition and procedures shall be the same as for the issuance of protective orders in the juvenile court under Sections 78-3a-20.5, 78-3a-20.6, 78-3a-20.7, 78-3a-20.8, 78-3a-20.9, and 78-3a-20.10. The court or the cohabitant may use the protections provided in this chapter and Title 78, Chapter 3a, Juvenile Courts, and when necessary, those protections under Title 76, Chapter 5, Offenses Against the Person, which provide for criminal prosecution.

(2) A person who has obtained a protective order pursuant to this section shall notify any other court in which another action is pending or order is issued pertaining to the same family member named in the protective order. 1991

30-3-6. Repealed. 1985

30-3-7. When decree becomes absolute.

(1) The decree of divorce becomes absolute:

(a) on the date it is signed by the court and entered by the clerk in the register of actions if both the parties who have a child or children and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program is administered and have completed attendance at the mandatory course provided in Section 30-3-11.3 except if the court waives the requirement, on its own motion or on the motion of one of the parties, upon determination that course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties;

(b) at the expiration of a period of time the court may specifically designate, unless an appeal or other proceedings for review are pending; or

(c) when the court, before the decree becomes absolute, for sufficient cause otherwise orders.

(2) The court, upon application or on its own motion for good cause shown, may waive, alter, or extend a designated period of time before the decree becomes absolute, but not to exceed six months from the signing and entry of the decree. 1992

30-3-8. Remarriage — When unlawful.

Neither party to a divorce proceeding which dissolves their marriage by decree may marry any person other than the spouse from whom the divorce was granted until it becomes absolute. If an appeal is taken, the divorce is not absolute until after affirmance of the decree. 1988

30-3-9. Repealed. 1969

30-3-10. Custody of children in case of separation or divorce — Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding the future custody, but the expressed desires are not controlling and the court may determine the children's custody otherwise.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate. 1988

30-3-10.1. Joint legal custody defined.

In this chapter, "joint legal custody":

(1) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

(2) may include an award of exclusive authority by the court to one parent to make specific decisions;